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Pitcairn

Working paper by the Secretariat

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I. General

1. Pitcairn[1] is located midway between Australia and South America at 25° S and 130° W. It comprises four islands in the western Pacific Ocean (Pitcairn, the only one of which is inhabited, Henderson, Ducie and Oeno). Although there is evidence of previous habitation by Polynesian peoples, Pitcairn was uninhabited when castaways from the HMS *Bounty* (9 mutineers and 19 Polynesians) arrived there in 1790. Today Pitcairn is inhabited by their descendants. The population of Pitcairn has been declining steadily since 1937, when it was approximately 200. According to the Administering Power, as at 31 December 1997, the total population of the island was 40, of whom 3 were expatriates. In 1997 population growth rate was estimated at -0.6 per cent. All the population live in Adamstown, the only settlement in Pitcairn. The terrain in Pitcairn is of rugged volcanic formation with a rocky coastline with cliffs.

2. The Pitcairners have their own dialect, a mixture of eighteenth century English and Polynesian; they also speak English.

II. Constitutional and legal developments

3. Pitcairn's constitutional arrangements were brought within the jurisdiction of the High Commissioner for the Western Pacific of the United Kingdom in 1898. The Pitcairn Order in Council 1952 established for the first time a separate office of the Governor of Pitcairn and, from 1952 until 1970, that office was held concurrently by the Governor of Fiji. In 1970 the Order in Council of 1952 was revoked and replaced by the Pitcairn Order 1970, which, together with the Pitcairn Royal Instructions 1970 are in effect the Constitution of Pitcairn. Those instruments established the office of Governor and regulate his powers and duties. The Governor is appointed by the Queen, acting on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs, to whom he is accountable. In practice, the United Kingdom High Commissioner to New Zealand is appointed concurrently as Governor of Pitcairn and the responsibility for the administration of the island is accordingly vested in him and is discharged by him and officers subordinate to him.

4. Under the 1970 Order, the Governor has legislative authority for Pitcairn and is empowered to formulate laws on any subject. However, the Royal Instructions require him to obtain the prior approval of the Secretary of State for the enactment of certain classes of laws, including those which appear to the latter to be inconsistent with the United Kingdom's treaty obligations and laws that discriminate between different communities and religions.

5. Laws enacted by the Governor are styled ordinances. Formally, all ordinances are subject to disallowance by the Queen, on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate directly for Pitcairn by an act of parliament or an order in council. It is under his legislative power that the Governor establishes courts for Pitcairn and regulates their jurisdiction and procedures (see paras. 12-22 below). The 1970 Order also vests in the Governor the power to appoint persons to offices in the public service and to remove or discipline them.

6. Pitcairn islanders manage their internal affairs through the Island Council. This was established by the Local Government Ordinance, which confers on it the duty to provide for the enforcement of the laws of Pitcairn and empowers it to make regulations for the good administration of Pitcairn, the maintenance of peace, order and public safety and the social and economic advancement of the islanders.

7. The Council is required to meet at least once every month. It consists of 10 members: the Island Magistrate, who is elected every three years; the Chairman of the Internal Committee, who is elected annually; four other elected members, who are also elected annually; the Island Secretary, who is a public officer and serves on the Council ex officio; one nominated member, who is appointed annually by the Governor; and two advisory (non-voting) members, of whom one is appointed annually by the Governor and the other is appointed annually by the other members of the Council.

8. The Island Magistrate is the President of the Island Council. He is also the Chief Executive Officer of Pitcairn and presides over the Island Court (see paras. 12-22 below).

9. The formal functions of the Internal Committee are to carry out the orders of the Island Council and to perform such duties as the Council may direct; in practice, its principal function is to organize and implement the work programme. The Committee comprises the Chairman and such other persons (not being members of the Island Council or public officers) as the Council, with the Governor's approval, may appoint.

10. To qualify for voting in elections to the various elective offices (Island Magistrate, Chairman of the Internal Committee and elected Councillors) a person must either be a native-born inhabitant of Pitcairn or have at least three

years' residence on the island and must be at least 18 years of age. A candidate for election as Island Magistrate or Chairman of the Internal Committee must either be a native-born inhabitant of Pitcairn or have at least 21 years' residence on the island; candidates for the other elective offices must either be native-born inhabitants or have at least 5 years' residence.

11. The Island Secretary and other non-elected officials (e.g. the Postmaster, the Radio Officer and Police Officer) are appointed by the Governor, invariably after consultation with the Council. A Commissioner based in Auckland carries out liaison between the Governor and the Island Council.

12. The court system of Pitcairn includes the Supreme Court, the Subordinate Court and the Island Court. In certain cases an appeal could lie from those courts to the Judicial Committee of the Privy Council. The Supreme Court consists of such a judge or judges as the Governor, acting in accordance with instructions from the Secretary of State, may from time to time appoint. It has unlimited jurisdiction in all civil and criminal matters. Trials before the Supreme Court, whether in criminal or in civil cases, would normally be held by a judge sitting alone, but the Court has the power, in appropriate cases, to appoint between two and four assessors.

13. The Subordinate Court consists of a magistrate, who is any proper person whom the Governor appoints for that purpose. The Court ordinarily has the same jurisdiction and powers in criminal cases as a magistrate's court in England and the same jurisdiction and powers in civil cases as a county court in England, but the Governor can enlarge its jurisdiction in particular cases. There is a right to appeal in all cases to the Supreme Court.

14. The Island Court consists of the Island Magistrate and two councillors. Its jurisdiction is limited to offences that are committed within the islands or in territorial waters by residents of the Territory in contravention of the Island Code, and civil actions. There is provision to appeal to the Supreme Court of Pitcairn, which the Governor has the power to constitute and which has jurisdiction in cases outside the competence of the Island Court. The Island Court is rarely required to sit.

15. Pitcairn's Constitution, as embodied in the Pitcairn Order (1970) and the Pitcairn Royal Instructions (1970), does not contain any provisions expressly guaranteeing human rights, nor has any formal machinery been established specifically for that purpose. Under the common law system that operates in Pitcairn, treaties that apply to Pitcairn (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked as a source of individual rights, although the courts are required, when possible, to construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation, to amend existing legislation or to adapt existing administrative practices, as the case may require.[2]

16. Where such new or amended legislation has resulted in the creation or definition of specific legal rights and those are denied or interfered with (or there is a threat of such action), a remedy is available in the courts through the ordinary procedures of civil litigation or, in appropriate cases, by criminal sanctions. For the most part, however, the legal protection of the human rights of Pitcairn islanders does not depend on specific legislation such as the two orders in council mentioned above: it is assured through the enforcement by the local courts of the basic principles of the law in force on the island, which follow the same basic principles as the laws of England.

17. The Island Court, the Subordinate Court and the Supreme Court all have jurisdiction affecting human rights in certain areas arising from the laws in force in the Territory. Similarly, the Island Magistrate and the Governor have jurisdiction in certain specified areas affecting human rights.

18. The violation of the rights of any person is justiciable by way of injunction and damages in the Supreme Court. The Supreme Court has inherent power and jurisdiction to award compensatory damages and to give directions that may be intended for the rehabilitation of that person. In addition, individuals subject to Pitcairn jurisdiction have direct rights of recourse to the United Nations Human Rights Committee, as a result of the accession by the Government of the United Kingdom on behalf of Pitcairn to the Optional Protocol to the International Covenant on Civil and Political Rights.

19. Without prejudice to the ability of the courts to grant relief and redress in any case where legal rights are infringed or threatened, the Governor has the ultimate responsibility for overseeing the implementation of human rights in Pitcairn. Any complaint of unlawful or oppressive action by any government official or authority can be raised with him, either directly or through one of his subordinate officers, and will be investigated thoroughly. If the complaint proves to be well-founded, he has the power to take appropriate remedial measures.

20. The laws in force in Pitcairn, including any specifically relating to human rights, are published by the Government

of the United Kingdom and are accessible to all on the island through the Island Secretary's office.

21. The Territory's reports to international bodies are prepared by the Government of the United Kingdom, drawing on information provided by the Governor and the Commissioner.

22. Further information on constitutional arrangements and the legal system in the Territory is contained in previous working papers prepared by the Secretariat (A/AC.109/1179, paras. 4-8, and A/AC.109/2072, paras. 3-19).

III. Economic conditions

23. Pitcairn's principal sources of income are stamp sales and revenue from interest and dividends. In 1996-1997, income for the year was $NZ 784,257 and expenditures $NZ 781,688, leaving a surplus of $NZ 2,569. There is no taxation.

24. The Territory's private sector economy is based on subsistence agriculture and fishing, and the sale of handicrafts, mainly to passing ships. The fertile soil of the valleys produces a wide variety of fruits and vegetables, including citrus, sugar cane, watermelons, bananas, yams and beans. Bartering is an important part of the economy. Pitcairn exports fruits, vegetables and handicrafts and imports fuel oil, machinery, building materials, cereals, milk, flour and other foodstuffs.

25. The island of Oeno, 80 nautical miles north-west of Pitcairn, is the primary source for prized miro wood, which is the wood preferred for hand-carved Pitcairn handicrafts. The island of Henderson, difficult of access, is the largest of the group and the most productive of the three satellite islands. Semi-annual trips are conducted by the islanders when substantial quantities of miro wood are required.

26. A cooperative store, established in 1967, is open three times a week for a short period. Basic food commodities are obtainable when supplies are available. Flour, eggs, meat and butter are provided if ordered several months in advance as they must be imported from New Zealand.

27. Diesel-driven generators provide 240-volt electric power for approximately four hours each evening and for two hours each morning. A simple telephone system operates on the island. Overseas communications are maintained through surface mail and, since 1992, via satellite (telephone, fax, telex). The Pitcairn Radio Station is operational between the hours of 1800 and 0530 GMT.

28. Visitors to Pitcairn must first obtain from the Office of the Commissioner for Pitcairn Island in New Zealand a licence to land and reside there. Licences are valid for six months but may be renewed for further similar periods by the Governor. The Island Magistrate, subject to the direction of the Governor, is empowered to permit ashore crew members and passengers of any visiting vessel.

29. Access to Pitcairn is possible only by sea and usually by container vessels plying between New Zealand and the United Kingdom or the eastern seaboard of the United States of America or the Caribbean, via the Panama Canal. Such vessels are expected to call northbound approximately three times a year, but there is no regular, scheduled service. There are no hotels or guest houses, but accommodation for visitors may be arranged with one of the Territory's families on prior application to the Island Magistrate. Some sources report that agreement has been reached to build an airstrip suitable for light aircraft in order to improve access to the island after an Australian entrepreneur funded a successful feasibility study.

30. Pitcairn's 6.4 kilometres of roads are unpaved. Motorcycles provide a frequently used mode of transport.

31. Power shortages in New Zealand have caused serious supply problems for Pitcairn. As a result of the failure of power feeder lines into Auckland, combined with effects of the El Niño current, the harbour has been seriously affected, with no power to run the automated machinery that loads and unloads ships. December 1997 and March 1998 supply ships were delayed, owing primarily to those power shortages. In general, shipping has suffered a decline in the past several months.

32. Press reports announced that the new communications equipment acquired by Pitcairn early in 1998 would reduce the cost of overseas telephone calls from US$ 10 per minute to US$ 3 per minute.

IV. Social and educational conditions

33. The population of the island is self-employed, but allowances and wages are paid to members of the community who participate in local government activities and who perform communal services. According to some sources, the labour force of Pitcairn in 1993 consisted of 14 able-bodied men. Information available in 1998 indicates that there are currently eight working men. This development is viewed with concern by the islanders since it takes four men to handle the big boats that go out to meet passenger ships.[3] According to an information sheet provided by the Office

of the Commissioner for Pitcairn Island in New Zealand, the only jobs in the Territory are government posts normally reserved for permanent residents of Pitcairn. There are no banking facilities.

34. Education is free and compulsory for all children between 5 and 15 years of age. The school is operated and financed by the Government. Instruction is in the English language and is based on the New Zealand standard curriculum. A trained teacher is recruited in New Zealand, normally for a two-year term. In 1996, it was reported that school enrolment was 13 students. Post-primary education is conducted at the school by correspondence courses arranged through the New Zealand Department of Education. Most Pitcairners are members of the Seventh Day Adventist Church.

35. According to previous reports by the administering Power, there are no social problems of a racial or cultural nature on Pitcairn. Women and men have equal status; personal and corporate freedom is enjoyed and Pitcairn's legislation meets the requirements of the United Nations conventions on human rights (see paras. 15-22).

36. The general health of the community is entrusted to a registered nurse working out of a government dispensary. Registered medical practitioners are employed from time to time for periods of between two and six months. The population also benefits from the services of visiting doctors travelling on ships that stop at the island. There is no doctor permanently stationed on Pitcairn.

37. A British police officer spent two months in Pitcairn in 1997 to organize law enforcement on the island. The police officer set up a traffic code for the Territory's roads and reviewed other procedures. The Territory is reported not to have had trained or experienced police for several years.

38. Additional information on the economic, social and educational conditions in the Territory is contained in previous working papers prepared by the Secretariat (A/AC.109/2012, paras. 4-26, and A/AC.109/2056, paras. 3-7).

V. Future status of the Territory

A. Position of the administering Power

39. On 4 February 1998, the Secretary of State for Foreign and Commonwealth Affairs, Mr. Robin Cook, in a speech before the Dependent Territories Association in London, announced that in his first months as Foreign Secretary he had set in hand a review of the United Kingdom's stewardship of the Dependent Territories. A summary of the principles and key issues contained in the proposal "to modernize" the United Kingdom's relations with the Territories is contained in the working paper prepared by the Secretariat of 1 May 1998 (A/AC.109/2102).

B. Consideration by the General Assembly

40. On 10 December 1997, the General Assembly adopted without a vote resolution 52/77 B, a consolidated resolution on 12 Non-Self-Governing Territories, section VIII of which is specifically devoted to Pitcairn.

Notes

[1] The information contained in the present paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland, under Article 73 *e* of the Charter of the United Nations, on 20 April 1998 and from published sources and Pitcairn websites.

[2] New legislation for this purpose could take the form of a locally enacted ordinance or of an order in council made by the United Kingdom Government. Examples of order in council made for this purpose are the Geneva Conventions Act (Colonial Territories) Order in Council 1959, which implemented the four Geneva Conventions in Pitcairn and a number of other British dependent Territories and the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, which similarly implemented the Convention against Torture and others.

[3] *Pacific Islands*, March 1998.